

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-831V

UNPUBLISHED

LYUDMILA DUTIL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 22, 2021

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

William E. Cochran, Jr., Black McLaren Jones Ryland & Griffee, P.C., Memphis, TN , for petitioner.

Claudia Barnes Gangi, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On June 5, 2019, Lyudmila Dutil filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza vaccine administered on January 25, 2018. Petition at 1. Petitioner further alleges that the vaccine was administered within the United States, that she suffered from the effects of her injury for more than six months, and that she has not received any compensation in the form of an award or settlement for her vaccine-related injuries. Petition at 1, 8-9. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On September 30, 2020, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On March 22, 2021, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$73,798.66 (comprised of \$70,000.00 for pain and suffering and \$3,798.66 for past unreimbursable expenses). Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$73,798.66 (comprised of \$70,000.00 for pain and suffering and \$3,798.66 for past unreimbursable) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

On September 30, 2020, respondent filed a Rule 4(c) Report, in which he conceded that petitioner sustained a Table left shoulder injury related to vaccine administration (SIRVA) following the flu vaccine administered on January 25, 2018; that the records show that the case was timely filed; that the vaccine was received in the United States; and that petitioner satisfies the statutory severity requirement by suffering the residual effects or complications of her Table injury for more than six months after vaccine administration. ECF No. 33. That same day, the Court issued a Ruling on Entitlement, finding that petitioner is entitled to compensation. ECF No. 34.

Respondent proffers that the Court should award petitioner a lump sum of \$70,000.00 for her actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Respondent proffers that the Court should award petitioner a lump sum of \$3,798.66 for past unreimbursable expenses, as provided under 42 U.S.C. § 300aa-15(a)(1)(A). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$73,798.66, in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

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